

**1. Requested Motion:**

**Meeting Date:** January 21, 2014

Motion to adopt Ordinance 13-10, Prohibition of Elevated Pools, amending Chapter 34 of the Land Development Code.

**Why the action is necessary:**

On October 21<sup>st</sup>, Town Council approved Resolution 13-26 declaring "Zoning in Progress" with regard to regulations for elevated pools. This Ordinance prohibits elevated pools until such time as regulations can be adopted to more effectively regulate them.

**What the action accomplishes:**

Prohibits the development of pools elevated above the crown of the adjacent roadway.

**2. Agenda:**

☐ Consent  
☐ Administrative  
☒ Public Hearing

**3. Requirement/Purpose:**

☐ Resolution  
☒ Ordinance  
☐ Other Special Events Permit

**4. Submitter of Information:**

☐ Council  
☒ Town Staff –  
☐ Town Attorney

**5. Background:**

On October 21<sup>st</sup>, Town Council approved Resolution 13-26 declaring "Zoning in Progress" with regard to regulations for elevated pools. Ordinance 13-10 was introduced and had the first of two public hearings on December 2, 2013. At this hearing, the Council tabled the ordinance. On January 10, 2014, Town Council voted 5-0 to remove ordinance 13-10 from the Table, and set the second public hearing for January 21, 2014 at 6:30 PM.


Exhibits

Draft Town Council Ordinance 13-10  
Resolution 13-26, Zoning in Progress

**6. Alternative Action:**

**7. Management Recommendations:**

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Park & Recreation Director	Town Clerk
						

**9. Council Action:**

☐ Approved    ☐ Denied    ☐ Deferred    ☐ Other

Town of Fort Myers Beach  
ORDINANCE NO. 13-10

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34, Article IV, Division 2, Section 34-1173 of the Town of Fort Myers Beach Land Development Code is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Alan Mandel, Mayor	AYE/NAY	Bob Raymond	AYE/NAY
Joe Kosinski, Vice Mayor	AYE/NAY	Jo List	AYE/NAY
Dan Andre	AYE/NAY		

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

BY: \_\_\_\_\_  
Alan Mandel, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Fowler White Boggs, Town Attorney

## EXHIBIT "A"

### Sec. 34-1173. Development regulations.

(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:
  - a. Fences or walls when in compliance with division 17 of this article.
  - b. Seawalls or retaining walls (see § 26-43(a)).
  - c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(b) ***Attachment to principal building.*** Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

(c) ***Height.*** Accessory structures shall comply with the height limitations for principal structures, provided, however, that in no event shall an accessory structure exceed the height of a principal structure located on the same lot or parcel. For swimming pools, whether the swimming pool is attached to the principal structure as part of the principal structure or is a freestanding accessory structure, the height of the swimming pool and swimming pool deck shall be no higher than the height of the crown of the adjacent roadway.

RESOLUTION OF THE TOWN COUNCIL OF THE  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 13-26

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACKNOWLEDGING THAT THE DEPARTMENT OF COMMUNITY DEVELOPMENT, AT THE DIRECTION OF TOWN COUNCIL, IS DEVELOPING PROPOSED LAND USE REGULATIONS RELATING TO THE PROHIBITION OF ELEVATED SWIMMING POOLS AND THAT SUCH PROPOSED ORDINANCE IS BEING DRAFTED AND WILL BE PROMPTLY SUBMITTED TO THE TOWN LOCAL PLANNING AGENCY (LPA) FOR ITS CONSIDERATION AND RECOMMENDATION; DIRECTING THAT THE LPA PROVIDE RECOMMENDATIONS, AFTER ITS DUE CONSIDERATION, WITH REGARD TO SUCH PROPOSED LAND USE AND DEVELOPMENT REGULATIONS; DECLARING THAT THE DEVELOPMENT OF SUCH REGULATIONS AND THE ZONING PROCESS RELATED THERETO CONSTITUTES "ZONING IN PROGRESS;" DIRECTING THAT PERMITS FOR ELEVATED SWIMMING POOLS NOT BE ISSUED UNTIL THE "ZONING IN PROGRESS" HAS BEEN COMPLETED BY FINAL CONSIDERATION OF SUCH PROPOSED LAND USE AND DEVELOPMENT REGULATIONS BY TOWN COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council has directed that the Department of Community Development develop proposed land use regulations addressing the regulation or prohibition of elevated swimming pools; and

WHEREAS, the Department of Community Development is in the process of preparing a proposed Ordinance addressing elevated swimming pools; and

WHEREAS, the proposed ordinance will be considered by the Town's LPA as required by the Town's land development code; and

WHEREAS, no final consideration or decision can be made by the Town Council except through the legally required and publicly advertised zoning consideration process; and

WHEREAS, the Town Council finds that the issuance of any permits for the construction of elevated swimming pools during this "zoning in progress" is detrimental to the best interests of the citizens of the Town of Fort Myers Beach.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Town Council hereby determines that it is appropriate and in the best interest of the citizens of the Town of Fort Myers Beach to study, consider and development land use regulation to address and/or prohibit the construction of elevated swimming pools within the Town of Fort Myers Beach. Until such time as the Town Council has an opportunity to consider the proposed land use regulations and the recommendations of staff and the LPA, the issuance of building permits for the construction of elevated swimming pools shall be prohibited.

Section 2. The Town Council hereby declares that the process currently in effect with regard to the development and consideration of land use regulations relating to elevated swimming pools constitutes "zoning in progress."

Section 3. In the event that any person or entity is denied a Development Order, Building Permit or other Town approval as a direct result of the prohibition set forth above, such person or entity may appeal such denial to Town Council. The fee for such appeal is hereby waived. For any appeal that is filed, the City Council shall consider same in a properly noticed meeting and, after due consideration, may authorize the approval of a building permit for an elevated pool upon a finding that such approval is not contrary to the long term goals of this Resolution and is not disadvantageous to the health, safety and welfare of the general public.


Section 4. It is the Town Council's position that this "zoning in progress" constitutes a priority and the timely preparation and processing of proposed land use regulations relating to elevated swimming pools shall be considered a priority by Town Staff and the LPA.

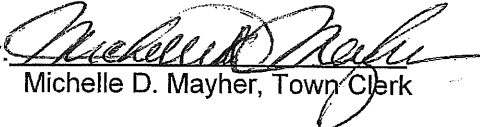
Section 5. Effective Date. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Andre and seconded by Council Member List and upon being put to a vote, the result was as follows:

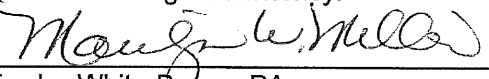
Alan Mandel, Mayor	aye
Joe Kosinski, Vice Mayor	aye
Jo List, Councilmember	aye
Dan Andre, Councilmember	aye
Bob Raymond, Councilmember	aye

DULY PASSED AND ADOPTED THIS 21st DAY OF OCTOBER, 2013, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By:   
Alan Mandel, Mayor

ATTEST:  
By:   
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By:   
Fowler White Boggs, PA